STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

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In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Illinois Bell Telephone Company d/b/a SBC Illinois	)	Case No. 04-0428

LEVEL 3 COMMUNICATIONS, LLC'S STATEMENT OF DISPUTED FACTS

COMES NOW, Level 3 Communications, LLC ("Level 3"), by its attorneys and pursuant to order of the ALJ, and files this Presentation of Disputed Issues.

It is Level 3's understanding based upon the ALJ's Ruling that he is interested in ascertaining the Parties' statements of fact to which the other parties dispute. Level 3 has undertaken a review o all 11 of the SBC Illinois witness' pre-filed testimony, and lists below the SBC and Staff witness' statement of facts to which Level 3 disputes. To the extent possible, Level 3 has "cut and pasted" the language from the pre-filed testimony.

By inclusion in this list, Level 3 does not assert that it will cross examine the particular witness on every disputed factual statement listed below. Conversely, there are a number of statement of facts not included in this list to which Level 3 disputes, but for purposes of hearings in this proceeding, does not intend to cross examine the witness. Failure to include any particular disputed statement of fact below should not be read as Level 3 agreeing with the assertion, just that Level 3 will not cross examine on that issue.

A. LEVEL 3'S DISPUTED FACTS CONTAINED IN SBC ILLINOIS' PRE-FILED TESTIMONY.

In this section, Level 3 presents the ALJ with a list of disputed facts contained in the pre-filed testimony of the indicated SBC Illinois witness.[1]

I. SBC Illinois witness Marc Novack

a. SS7 Issue 1

1. During the Parties' recent negotiations, Level 3 indicated that during the term of the interconnection agreement the parties are arbitrating, Level 3 may wish to change its third party SS7 service provider (hereinafter, "TPSSP") in the event it is using a TPSSP, or to provide SS7 services for itself.

2. SS7 quad links are sets of data links that are used to physically connect the Parties' SS7 infrastructures. These links primarily carry SS7 messages that are used for call set up and access to call related data bases such as 800 number queries, calling name queries (aka "CNAM"), and line information for calling card number queries (aka "LIDB"). The SS7 network is a data overlay network that uses SS7 links, SS7 Signal Transfer Points (SS7 switches) and SS7 information databases to assist in call set up and routing. The SS7 network is separate from the Public Switched Telephone Network that actually carries end user voice grade traffic.

3. Level 3's proposed language in Appendix SS7, Section 2.1.1 would allow Level 3 (and SBC) to use the quad links for *both* local and access kinds of calls, but would require one billing treatment for Level 3's CLEC (local) calls (bill and keep), and a different billing treatment for calls subject to traditional access compensation.

4. Level 3's proposed language in Appendix SS7, Section 2.1.1 would require SBC to do the impossible. The arrangements contemplated by Section 2.1 of the SS7 Appendix, including Section 2.1.1 are, by definition, for the traffic that is within the scope of SBC's obligations under the Telecommunications Act of 1996, not for access traffic. This interconnection agreement under the 1996 Act, in other words, cannot properly be used to impose obligations on SBC concerning access traffic.

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[1] At 5:43 PM on the evening of October 14, 2004, SBC Illinois served to the parties an additional attachment to the prefiled testimony of SBC witness McFee and the supplemental testimony of Carl Albright, which purports to respond to a number of issues raised in Staff Witness Zolnierek's pre-filed testimony. Level 3 reserves its rights to object to this late-filed testimony, in light of the fact that it is inconsistent with the schedule adopted by the ALJ in this matter and the Commission's rules pertaining to arbitration procedures (i.e. Part 761.10 et seq. of the ICC Administrative Code), and that it fundamentally prejudices Level 3's rights. For purposes of this pleading, Level 3 was unable to take the time to fully review the contents of the additional testimony, and is unable to include any disputed facts into this pleading. Level 3 further reserves the right to cross examine Mr. Albright in the event that the unsolicited additional testimony is allowed to go into the record.

5. Level 3's proposed language in Appendix SS7, Section 2.1.1 would require SBC's billing systems to segregate the SS7 messaging of Level 3's CLEC (local) calls from the SS7 messaging of Level 3's LD Internet Protocol ("IP") calls, so that SBC can charge a percentage of the total SS7 messaging costs at the rates that apply to CLEC (local) compensation under this Agreement, and charge the remaining percentage of LD IP calls at access rates. SBC's billing systems simply cannot do that.

6. The SBC product managers who developed SBC SS7 services did not anticipate that SBC would need to distinguish and bill for different calls types that use the same SS7 quad links. This is why SBC billing systems are not able to support what Level 3 proposes in its language.

7. TPSSPs purchase SBC SS7 services from SBC's access tariffs. Third parties that are behind TPSSPs are in effect invisible to SBC. Thus, there are no compensation arrangements with these carriers that are not the customers of SBC, but are in fact customers of the TPSSPs. Therefore, there is no need for SBC to have the ability to bill carriers that are behind TPSSPs, because SBC's financial arrangement is with TPSSPs who purchase SS7 services from SBC's tariff and are billed directly by SBC for use of those services.

8. SBC identifies traffic that is subject to access compensation based on its transmission between SBC and long distance inter-exchange carriers (LD IXCs) over access trunk groups that are subject to rates, terms and conditions of access tariffs. However, it becomes problematic in the event an IP call crosses the country, circumventing the LD network of an LD IXC, and terminates to an SBC LEC in a different state.

9. CLEC interconnection agreements do not provide SBC the ability to collect access charges. Access toll calls subject to access rates should be delivered over connections that are established via access tariffs.

10. SBC's proposed language in Appendix SS7, Section 2.1.1 appropriately requires the Parties to deal elsewhere with the exchange of SS7 messages associated with traffic that they are not exchanging in that capacity.

11. SBC cannot separate and pro rate the messages as Level 3's proposal would require.

12. This Commission sustained precisely the position that SBC is taking here when it rejected an AT&T request to "improperly extend" a Commission decision concerning local SS7 traffic "to include access SS7 traffic." In its decision, the Commission, recognizing that it would not be possible for the parties to segregate and measure SS7 messages for access traffic as opposed to SS7 messages for local traffic if both types were sent over the same link, approved SBC's language that required AT&T to separate the two types of traffic and send them over "different links."

b. OET Issue 3

1. The proposed OET Appendix language in Section 5.4.8 simply affirms what is reflected in Telcordia industry guidelines that describe SS7 protocol parameters which allow carriers to determine the jurisdictional nature of calls for the purpose of accurate billing. The language also affirms Telcordia guidelines for other parameters, including, but not limited to, privacy indicators and for those that enable SBC to route an end user call to that end user's chosen long distance carrier.

2. While the proposed language is specific to the two most common types of signaling protocols used for customer call set up (Multi Frequency (MF) and Signaling System 7 (SS7)), it merely relates a few of the available, but necessary, parameters that may be sent using MF or SS7 signaling**.**

3. There is absolutely nothing in SBC's proposed OET Appendix language in Section 5.4.8 that limits the Parties' consideration and use of other technologies.

4. The OET Appendix applies to Level 3 connectivity to SBC in the event Level 3 is situated in the same LATA as SBC, but is not situated within SBC's operating territory in the LATA.

5. Telcordia standards for call signaling protocols are largely static once the protocol passes the development stage and is deployed in live networks.

II. SBC Illinois witness Chris Read

a. IC Issue 11c

1. Meet-Point Billing is a method for allocating access revenues from a third party IXC, and it applies to *IXC* switched access traffic that is jointly provided by two LECs. Meet-Point Billing does not apply to LEC-to-LEC intraLATA toll traffic (traffic that is not carried by a third party toll carrier), nor would it make any sense given that there is no third-party IXC involved.

b. IC Issue 17

1. IntraLATA toll traffic that is subject to a Primary Toll Carrier arrangement is called "LEC-to-LEC" traffic. In contrast, if the end user has presubscribed its toll traffic to a third party interexchange carrier ("IXC"), that traffic is carried by the originating LEC to the IXC's network, and ultimately terminated on the second LEC's network. The two LECs use "Meet Point Billing" to share the access revenues from the IXC.

2. There are no primary toll carrier arrangements in Illinois. Since the disputed language applies only in states with such arrangements, it does not apply in Illinois.

3. Presubscribed traffic is subject to Meet-Point Billing, as detailed in Section 12 of the Agreement, while compensation for LEC-to-LEC traffic is governed by Sections 10 and 14 of the IC appendix. Mixing the different traffic types, which are subject to different compensation arrangements, will likely result in inaccurate billing. If Level 3 is permitted to use Section

251(b)(5) interconnection trunks to route both 251(b)(5) and IXC traffic (i.e., if Level 3 uses "nonjurisdictional" trunks), neither SBC nor Level 3 would be able to isolate or measure the volume of each type of traffic that terminates over that combined trunk group or to segregate the traffic that belongs in a separate compensation category, which in turn would necessitate the use of estimated, percentage factors in lieu of actual measurements to allocate traffic between categories and create a bill.

4. Percentage factors are used in situations where the jurisdictional nature of the traffic *cannot* be identified. Level 3 is suggesting that SBC *create* unidentifiable traffic. That has never been the industry practice.

c. IC Issue 18a

1. The phrase "800 Access Detail Usage" refers to recordings made from a switch when an 800 database query is done. The recording is translated into Exchange Message Interface (EMI) format for transmission to the receiving company. The receiving company can use these recordings to assist in bill verification or to issue a bill to its customer.

2. EMI is the industry-created and accepted standard used for the exchange of telecommunications message information between Sending and Billing Companies for billing and tracking analysis. The EMI was developed and is maintained by Industry participants in the Ordering and Billing Forum (OBF), a committee under the Alliance for Telecommunications Industry Solutions (ATIS).

3. The purpose of industry standards is to give parties in the industry a common "language" that will allow them to communicate with each other. SBC has designed its systems to work with the EMI format. Any other non-standard format would require extensive modifications to SBC's systems for billing access charges.

d. IC Issue 19

1. The MECOD document provides guidance in ordering of access services. The document is maintained by the OBF Interconnection Services Ordering and Provisioning (ISOP) subcommittee. The MECOD document is not applicable for the discussion of this issue related to "…recording, assembling and editing of message detail records".

2. The MECAB document provides industry-created and accepted guidelines for Meet-Point Billing (MPB) options. The document is maintained by the OBF Billing subcommittee. It was written by Industry participants in an open forum by companies desiring a uniform, documented method to which their companies could establish common practices.

3. Consistent with the FCC's NPRM on IP services, any service provider that sends traffic over the Public Switch Telephone Network (PSTN) should adhere to industry developed and nationally accepted compensation arrangements in place. Therefore, Level 3 must adhere to the OBF MECAB default billing arrangement (Multiple Bill/Single Tariff). Records must be exchanged in an EMI Category 11-0X detail format for MPB.

4. For any traffic that is sent to or received from an IXC, SBC (in compliance with the MECAB standard), proposes that it continue to apply Switched Access charges.

5. For Switched Access Services, Meet Point Billing arrangements are in place to address only IXC traffic jointly provided by the Parties. IXC traffic that is not jointly provided is not subject to Meet Point Billing. Level 3 proposes to apply Meet Point Billing to all "Circuit Switched Traffic", which would be inappropriate.

III. SBC Illinois Witness Deborah Fuentes-Niziolek

a. PC Issue 1/VC Issue 1

1. Level 3 has proposed language that would allow it to "pick and choose" rates, terms and conditions from either its ICA with SBC or from a state tariff, presumably depending on which is the most beneficial to Level 3 at the time. The terms and conditions by which Level 3 obtains collocation are supposed to be set forth in a negotiated or arbitrated interconnection agreement, not in a state collocation tariff. Permitting Level 3 to order from a tariff is unnecessary and would be administratively burdensome.

2. Allowing Level 3 to "pick and choose" specific sections (or subsection) of language from a collocation tariff goes against the premise of the FCC's order.

3. Permitting Level 3 to pick and choose from two different sets of rates, terms and conditions would be administratively confusing and burdensome for SBC. There is no compelling reason to allow Level 3 to order out of a tariff, in addition to ordering from its interconnection agreement with SBC, which is the result of arms-length negotiation and arbitration.

4. When SBC makes a voluntary offering to CLECs, it does so in the context of a negotiated interconnection agreement or an Accessible Letter, not through a tariff.

5. Level 3 does not need to be able to order out of a tariff to ensure it has access to the most current collocation offerings.

b. PC Issue 2/VC Issue 2

1. SBC's language provides that if SBC determines that the equipment that Level 3 seeks to collocate does not meet the applicable safety standards or is not necessary for interconnection or access to UNEs, Level 3 shall not be able to collocate that equipment until it is determined (through party-to-party discussions or Commission intervention) that the equipment, in fact, complies with all safety requirements and is necessary for interconnection or access to UNEs.

2. Level 3 wants to be able to collocate equipment that SBC determines is non-compliant, while the dispute is resolved. Under Level 3's argument, therefore, it would be allowed to

collocate a stand-alone switch, so long as Level 3 disputed SBC's conclusion that such equipment could not be collocated.

3. Under Level 3's language, it would be able to collocate a piece of equipment that SBC (and presumably Level 3) knows to be dangerous and not in compliance with safety standards.

4. Nothing in the disputed language proposed by SBC creates any ambiguity at all with respect to the applicable safety standards. And, nothing in the language permits SBC to impose safety or engineering requirements that are more stringent than those that apply to SBC's own equipment.

5. Unless SBC genuinely believes that the equipment Level 3 is seeking to collocate is not compliant, SBC has no reason to incur the costs of dispute resolution and ultimately have to allow the equipment anyway. Placing non-compliant equipment in collocation space is burdensome for SBC and deprives other CLECs with legitimate requests access to such collocation space.

6. Level 3 does not propose any language at all, despite having its witness testify that language in the existing agreement "adequately balanced the respective interests of the parties."

c. PC Issue 3

1. SBC's proposed language is straightforward and clear and Level 3 does not point to any provision that it does not understand. At the outset of a dispute, SBC requests some basic information from the CLEC to assist SBC in researching and attempting to resolve the specific dispute. SBC's proposal then provides a multi-step process that gives both parties opportunities to work through the dispute, including through informal discussions and elective or mandatory arbitration.

2. A separate dispute resolution process is necessary for collocation disputes.

3. SBC's language states that a dispute must be brought to SBC's attention "not later than twenty-nine (29) days following the Bill Due Date." In other words, in addition to the time a CLEC has to pay the bill (*i.e.*, the time up until the bill due date), the CLEC has an additional twenty nine days beyond the bill due date in which to respond.

4. In the past, CLECs have challenged amounts billed for collocation arrangement years after the billing occurrence. Permitting Level 3 to wait for as long as two years creates a risk that record and/or individuals involved in the original billing will not be available. This language also apportions responsibility appropriately; if Level 3 feels that it has been improperly charged, it must take responsibility for disputing the bill in an appropriate time frame.

5. Level 3 should be able to review a bill and determine if there is a dispute within a month after the bill is due.

6. The escrow requirements that are described in section 29.3 of SBC's proposed physical collocation appendix are clear, concise and based upon basic business needs.

7. The request for an escrow account is not unusual, and is in fact, requested of all CLECs by SBC.

8. SBC's proposed Section 29.1.1.1 quite clearly states that, in cases where late payment fees have been paid by Level 3, SBC "shall credit LEVEL 3's bill for any portion of the Disputed Amount(s) resolved in favor of LEVEL 3, *together with any portion of any Late Payment Charges assessed with respect thereto* no later than the second Bill Due Date after the resolution of the dispute."

9. SBC has proposed this language to provide an established process for all parties to follow. It is a consistent approach used by all CLECs and is an appropriate means to try to resolve issues before reaching the need for arbitration and/or commission intervention.

10. SBC proposes mandatory arbitration only for minor disputes, defined in SBC's proposed language as those that amount to less than 1% of the total amount paid by Level 3 for collocation in the preceding 12 months. For non-minor disputes, the arbitration option is elective, *i.e.* both parties must consent to resolve the dispute through arbitration.

V. SBC Illinois Witness Carol Chapman

a. SS7 Issue 1

1. The FCC's *Triennial Review Order* ("*TRO*"), eliminated SBC's obligation to provide SS7 signaling as an unbundled network element to facilities-based providers. Consistent with that ruling, SBC no longer offers unbundled access to SS7 via an SS7 Appendix. Instead, the SS7 Appendix now reflects the fact that Level 3 will provide its own SS7 signaling or obtain SS7 signaling available in SBC's tariff.

2. The FCC found in the *TRO* that CLECs are not impaired without access to an ILEC's signaling networks. Specifically, the FCC stated (at ¶ 544) that when an ILEC is not providing unbundled local switching to a CLEC, "there are sufficient alternatives in the market available to incumbent LEC signaling networks and competitive LECs are no longer impaired without access to such networks as UNEs for all markets."

3. CLECs may obtain access to SBC's SS7 offerings through its access tariff offerings.

4. SBC has proposed language that would establish that if Level 3 chooses to act as its own SS7 service provider, SBC is willing to share the costs associated with establishing SS7 quad links between SBC and Level 3 as long as those quad links are only used for Level 3 *CLEC* calls (and not calls that are subject to traditional access compensation). … Under the Bill and Keep arrangement contemplated by SBC's proposed language, neither party would bill the other; however, in order for this arrangement to work, the SS7 quad links must only be used for local CLEC calls. Level 3's proposed language would allow the local SS7 quad links to be used for

calls that are subject to traditional access compensation and require both SBC and Level 3 to determine the percentage of non-local calls in order to bill access rates on a prorated basis.

5. SBC's SS7 network does not support the type of arrangement proposed by Level 3.

6. Level 3's proposed language would require SBC to develop and implement new, highly manual billing processes for the "prorated" portion of the calls. Although the FCC has already determined that SS7 signaling is available competitively, Level 3 is attempting to force SBC to create a new access offering through the arbitration of its interconnection agreement.

7. Calls that are subject to traditional access compensation should not be provisioned using SS7 quad links that were established on a shared cost basis for the provision of *local* calls.

VI. SBC Illinois witness Douglas

a. GT&C Issue 19.

1. With regard to the definition of switched access service, the existing tariff definition provides a high level explanation of the associated interstate and intrastate switched access charges that apply under SBC's federal tariffs and state access tariffs.

2. By omitting from the definition of switched access service "the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises", Level 3's proposal leaves the definition of switched access open to different interpretations and likely would result in future disputes between the parties.

3. There is no language in the tariffs, in the Code of Federal Regulations (CFR) or this Commission's rules that require customers to use 'regular phone lines' to make a call.

4. There is no language in the tariffs, in the Code of Federal Regulations or this Commission's rules that even define 'regular phone lines'.

5. The fact that Level 3 is seeking forbearance from Part 69.5 of the FCC's rules demonstrates that Level 3 currently is subject to these rules.

b. IC Issue 2 and IC Issue 4.

1. Under Part 69.5 of the Code of Federal Regulations (CFR), interexchange traffic not explicitly excluded within the parties' interconnection agreement is subject to Switched Access charges listed in each party's access tariffs filed with the Federal Communication Commission (FCC) and this Commission.

2. When Level 3 uses local interconnection trunks to route both Section 251(b)(5) traffic and interexchange traffic, neither Level 3 nor SBC are able to isolate or measure the volume of each type of traffic, which in turn necessitates the use of estimated percentage factors for billing.

3. The use of estimated factors in turn enhances the potential for misstatement of switched access usage and thus the incorrect application of access charges.

4. An access customer, typically an interexchange carrier or "IXC," purchases Feature Group "D" access trunks to originate or terminate interstate and intrastate interexchange calls between the IXC's customers and the end users served by a local service providers like SBC.

5. When such traffic is originated on or received at SBC's tandems or end offices, it is billed to the access customer either as originating or terminating switched access. The billing of this traffic is done through SBC's Carrier Access Billing System ("CABS").

6. CABS was developed in compliance with industry standards to bill access customers for access traffic.

7. The system has undergone a number of enhancements over the years, but continues to perform as it was originally intended, i.e., as a mechanism to bill access customers the appropriate access elements and usage for each call.

8. CABS is able to differentiate automatically between interstate and intrastate access traffic based on the originating and terminating telephone numbers when calling party number ("CPN") information is provided by the originating carrier.

9. Occasionally, call detail records lack CPN information to determine the jurisdiction of a call. To cover those exceptions, the access customer provides SBC with a Percent Interstate Usage ("PIU") factor to be used as a proxy for estimating the amount of interstate traffic delivered without CPN to which interstate access charges should apply. The estimated amount of interstate traffic is subtracted from the total unidentified access traffic to determine the intrastate access compensation due SBC for the portion of unidentified traffic determined to be intrastate traffic. Development and application of the PIU is accomplished pursuant to section 2 of SBC's intrastate access tariff and tariff filed with the FCC.

10. It will be impossible to isolate and measure the volume of each type of traffic terminating over the trunk group, which in turn will make it impossible to accurately bill for this traffic.

11. Local interconnection trunk groups are intended solely for the exchange of local traffic.

12. It is improper for interexchange switched access traffic to be delivered over local interconnection trunk groups because it can be used as a method to avoid appropriate switched access charges.

13. There is no language SBC could propose that would completely eliminate other carriers' attempts to knowingly avoid access charges.

c. IC SBC Issue 20A.

1. Interexchange traffic not explicitly excluded within the parties' interconnection agreement is subject to switched access charges listed in each party's tariffs filed with the FCC, if interstate intraLATA, and this Commission, if intrastate intraLATA.

VII. SBC Illinois Witness Kirksey

a. CT&S Issues– Def 2, 3, 17B; ITR 18, 19; IC 2

1. "IP-Enabled Services Traffic" is a new term that Level 3 has created for the purpose of this arbitration.

2. Level 3 proposes that all "IP-Enabled Services Traffic" should be exempt from access charges.

3. Although the FCC has coined the term "IP-Enabled Services" and is conducting a rulemaking to determine how that term should be defined, the FCC has not adopted any final rules defining "IP-Enabled Services."

4. The FCC has already rejected arguments that one form of service that "relies" on IP should be exempt from access charges.

5. SBC's proposed language classifies calls (and determines compensation) based on the call path. In a forbearance petition filed with the FCC in December 2003, Level 3 itself eschewed generic descriptions of IP-based traffic and chose to define such traffic based on the particular call path at issue.

6. PSTN-IP-PSTN Traffic (also known as "IP-in-the-middle" Traffic) is traffic that originates over a local exchange carrier's circuit-switched network and is delivered to an interexchange carrier that converts the traffic to IP format, transports that traffic across its network, reconverts the traffic to the circuit-switched format, and delivers the traffic (either by itself or by partnering with other service providers) to a different exchange for termination over a local exchange carrier's circuit-switched network.

7. This use of IP technology is entirely transparent to the end user and does not enhance or change the content of the communications traffic in question or make the interexchange service any more functional or flexible to the end user.

8. The interexchange services that use IP technology in the transport component of the call are marketed, sold, and priced no differently than interexchange services that do not employ IP technology.

9. IP-PSTN Traffic is traffic that originates from the end user's premises in IP format and is transmitted in IP format to the switch of its service provider. The service provider then converts that traffic to circuit-switched format and delivers that traffic (either by itself or by partnering with other service providers) to a local exchange carrier on the PSTN for termination over that

carrier's circuit-switched network. Stated another way, one end of the call is on an IP network and the other end of the call is on the PSTN.

b. GT&C DEF Issue 2.

1. Under existing FCC rules and SBC tariffs, traffic is routed and billed based on the CPN (Calling Party Number) associated with that traffic.

2. CPN is a well-defined, widely recognized, industry standard term, which the FCC defines as the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message.

3. Level 3 proposes to route and bill IP-PSTN traffic based on "Call Record." This Call Record would include some type of code, created by Level 3, to identify the traffic at issue as IP-PSTN traffic for routing and billing purposes.

4. While some SS7 parameters exist today that identify various types of traffic such as payphone, hotel, or inmate, there is no current industry-recognized method for identifying a call as IP-PSTN. Neither SBC nor the industry has any standardized method to identify these calls.

c. GT&C Def Issue ____ Section 7.2, 7.7 – 7.10.

1. Industry practices, and the FCC'S existing rules, do not exempt certain forms of interexchange traffic from access charges based on the technology (*i.e.*, circuit-switching or IP) used on the originating end of the call.

d. GT&C – Def Section 13.

1. The definition of "Out of Exchange" traffic, or "OET", proposed by Level 3 is too broad. Level 3's proposal, including the terms "Telecommunications Services" and "IP Enabled Services", expands the definition to include all forms of voice and data services.

e. ITR Section 12

1. Level 3's proposal would nullify the current access charge regime preserved by Section 251(g) of the 1996 Act and violate existing FCC rules by exempting all IP-PSTN traffic from access charges.

2. SBC's proposal complies with the FCC's existing rules and preserves the status quo relating to access charges, consistent with the FCC's intention to maintain the current intercarrier compensation regime for all calls terminating to the PSTN, unless and until the FCC reforms that compensation regime.

3. Traffic that originates and terminates on the PSTN and that is routed or transported in whole or in part using IP technology is a telecommunications service subject to applicable intrastate (and interstate) switched access charges.

4. The FCC has conclusively resolved the debate over the application of switched access charges to PSTN-IP-PSTN traffic.

5. Level 3's position on the applicability of access charges to PSTN-IP-PSTN traffic is internally inconsistent.

6. Under existing FCC precedent and rules, providers of IP-PSTN services, like all users of access services, are subject to the obligation to pay intrastate and interstate access charges when they send traffic to the PSTN, unless specifically exempted from doing so.

7. In its comments on the FCC's *IP-Enabled Services NPRM*, SBC has argued that IP-PSTN traffic is jurisdictionally interstate and should be subject exclusively to interstate access charges.

8. As originally intended in 1983, the ESP exemption only allows for an exemption from access charges where access services are used to provide the link between the ISP and its subscribers. And even then, the ESP exemption only applies to the provision of an information service by the ISP to its subscriber. All other uses of the PSTN by ISPs involving interexchange traffic (e.g., sending traffic to a LEC's telecommunications service customer on the PSTN) are subject to appropriate access charges.

9. SBC has no intention of "taking the law into its own hands" and declaring its proposals as substitutes for valid rules.

10. Level 3 seeks to be exempt from paying access charges for calls it terminates to the PSTN, while all other providers would continue to pay such charges.

11. All carriers, including carriers providing PSTN-IP-PSTN services and IP-PSTN services, such as Level 3, are required to pay access charges for calls they terminate to the PSTN.

12. The ESP exemption is not as broad as Level 3 asserts and does not exempt a provider of IP-PSTN services from paying access charges on the PSTN side of a call, regardless of the fact that the provider may be offering an information service to its own customer on the IP side of the call.

13. The functionality and the use of the PSTN is identical once a call is handed off to the PSTN without regard to whether the call was originated in IP format or not.

14. Level 3 itself seeks a competitive advantage by improperly avoiding or eliminating access fees on PSTN-IP-PSTN traffic and IP-PSTN traffic. SBC's proposed language is intended to prevent such an inappropriate advantage consistent with the FCC's longstanding rules and precedents, including its pronouncements in the *Access Avoidance Order*.

15. Level 3 defines the term "net protocol conversion" in a completely self-serving manner.

16. The FCC clearly stated in the *Non-Accounting Safeguards Order* that a simple conversion from one protocol to another (*e.g.*, IP conversion to TDM) constitutes "no net" protocol conversion and as such those services would constitute Telecommunications Services, *not* Information Services

17. Level 3's attempt to broadly re-define protocol conversion merely reflects Level 3's desire to improperly re-define services offered by Level 3 as Information Services in an attempt to avoid access charges.

f. ITR Issue 19; ITR Section 13.

1. Because Level 3's proposed language in Section 3.2 is inappropriate to include in the interconnection agreement, so too is the language Level 3 proposes here.

g. IC Issue 2; IC Section 3.2

1. To ensure the consistent application of Switched Access rules and regulations to all carriers and to interexchange traffic, and to ensure that SBC and its customers are protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates, the Commission should maintain the regulatory *status quo* by approving SBC's proposed contract language.

VIII. SBC Witness Albright

a. SBC's Network

1. A Point of Interconnection is the point at which SBC's network and the network of another carrier meet and connect in order to exchange traffic.

2. Traffic is exchanged over trunk groups that are provisioned on the facilities. There is a difference between a trunk and a facility.

3. A facility is a physical medium used to connect two points on a network.

4. Facilities in the SBC network are primarily made of copper or fiber optic cable. Facilities establish physical connectivity between central offices. When two telecommunications companies interconnect their networks together, facilities are physically connected together linking the two networks to one another.

5. The point at which this connecting or linking takes place is known as the Point of Interconnection or POI. This physical linking of the two companies' facilities creates an end to end facility path that allows each company to establish the trunking network between their switches. It is common to see facilities referred to in terms such as DS1, DS3, OC3, or OC12.

6. Trunks are ports on a switch used to create a dedicated talk path from one switch to another. When an end user in one switch wants to call an end user in another switch, the originating switch routes the call (based on the NPA-NXX of the end user being called) to a particular Trunk Group. Within the Trunk Group, an idle trunk is identified and is then dedicated to that call for the duration of the call. No other call can use that trunk until the current call is completed.

7. Level 3 incorrectly uses the two terms interchangeably saying it has facilities to a certain location when in fact it has trunks to a location and the underlying facilities are actually SBC's. Trunking to a point in the network does not create a POI.

8. The POI is only created when Level 3's facilities are physically connected to SBC's network.

9. While trunks require a facility so that SBC and Level 3 can exchange traffic, this is just one use of a facility.

10. Facilities are used to connect many types of communications devices, e.g., burglar alarm systems or computers.

11. One cannot establish trunking between offices without a facility.

12. Without a facility to ride, a path (trunk) for calls between switches cannot be established. Similarly, simply having a facility between two points is not enough to complete a call.

13. A trunk must ride the facility for a call to be completed. For a call to complete it must find an available trunk riding a facility. Trunks and facilities work hand-in-hand so calls can be completed.

14. When a carrier purchases a switch, the switch is equipped with a certain amount of trunks, engineered based on the number of subscriber lines it serves.

15. When Level 3 requests the use of an SBC Facility to Interconnect with SBC, there is a charge for the facility. SBC's proposal would allow for Level 3 to establish trunks to the necessary offices while SBC assumed the financial responsibility for the underlying facilities until certain criteria were met.

16. There are single purpose tandems such as Local Only tandems, Operator Tandems, and Inter-LATA or Access Tandems. There are also multi-purpose or Multi-function Tandems such as Combined Local and Intra-LATA Tandems; Combined Intra-LATA and Inter-LATA Tandems (also referred to as an Access Tandem); and there are Combined Local, Intra-LATA, and Inter-LATA Tandems.

17. An Access Tandem is a switch that is designed and engineered to provide access between the Local Exchange Carrier ("LEC") Network and the Inter-exchange Carrier Network.

18. An Access Tandem provides end users in the LEC Network with access to an IXC that they have chosen to handle Inter-LATA long distance calls.

19. An Access Tandem also provides the IXCs access to the end users in the LEC network for terminating calls from end users in other LATAs.

20. Sometimes, an Access Tandem is also referred to as a "Feature Group D" tandem, or as an "Equal Access" Tandem, or as an Inter-LATA Tandem.

21. The definition provided above is an industry accepted standard Level 3 has proposed language that limits the definition of an Access Tandem switch to one that only carries Inter-LATA Inter-exchange Carrier (IXC) traffic.

22. SBC does not employ tandems as defined by Level 3 in its proposed language, rather, SBC employs tandem switches, which are capable of handling a combination of different traffic types.
SBC has twenty four tandems in Illinois, including Operator Service Tandems. Of these tandem switches, Nortel manufactured twelve, and Lucent Technologies manufactured twelve.

23. The basic function of a tandem switch is to switch calls or traffic between other switches A tandem switch accomplishes this by connecting a trunk, which comes from one switch, to a trunk that goes to another switch. A tandem switch does this for all types of traffic.

b. NIM Issue 1:

1. Level 3 cannot use the Interconnection Architecture facilities and equipment solely for the purpose of originating or terminating its interexchange traffic.

2. The language SBC has proposed for NIM Appendix section 1.1 provides that these facilities and equipment are not to be used solely for this purpose.

3. [In support of its position for NIM #1, SBC cites to] Paragraph 191 of the Local Competition Proceeding First Report and Order states: "We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2)."

c. NIM Issue 2.

1. Level 3 mistakenly assumes that since SBC-LD can deliver calls outside of a LATA to any point within another LATA, it should obtain that service from SBC as well.

2. Level 3 requests that it be permitted to interconnect at a single POI within a LATA (which is permitted under the law and under SBC's proposed language) and be permitted to

interconnect at a single POI "within an area that is larger than the LATA" (a request that is not supported by the law).

3. The language SBC proposes in Section 2 of the NIM Appendix offers Level 3 three methods of interconnecting its network with SBC's network: at a POI in each tandem serving area, at a POI that is not in the tandem serving area, yet still within the LATA ("Distant POI"), or, at a single POI in the LATA on SBC's network.

4. SBC also proposes an End Office Interconnection for when an SBC end office subtends another ILEC's tandem switch. This method is only intended for the exchange of traffic between the SBC customers served by that switch and Level 3 customers within that exchange.

5. SBC's proposed language does not prohibit Level 3 from choosing a single POI per LATA.

6. Level 3's extensive discussion about the alleged inefficiency and detrimental effect of requiring multiple POIs is irrelevant.

7. SBC's proposed language set forth above plainly does not permit SBC to choose the location or number of POIs; rather, it gives Level 3 three options for interconnecting with SBC's network.

8. Mr. Gates incorrectly argues that Level 3's deployment of facilities would equate to "shifting improperly the costs of building out the SBC network to its competitor" (p. 21).

9. Nothing in Section 251(c)(2) of the Act requires SBC to build out its network to its competitor, rather SBC must provide interconnection within its network for the facilities and equipment of the requesting carriers. This has been further confirmed by the FCC in the TRO, in which the FCC clarified that "transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network."

10. Level 3 seeks authority from this Commission to dismantle its existing multiple POI arrangements for no other reason than to shift Level 3's obligations for Level 3's facilities requirements to interconnect to SBC.

11. Level 3 is proposing to establish a POI somewhere outside of the LATA in which it wishes to exchange local and intra-LATA traffic.

12, SBC's proposed language permits Level 3 to select the location of the POI and gives Level 3 the option to select a single POI in a LATA (as well as two additional options for interconnection).

13. Level 3 fails to cite any support for its proposal to interconnect within an area larger than the LATA because there is no such support.

14. Level 3's testimony largely ignores its proposed language that it be permitted to establish a single POI in an area outside of the LATA, focusing only on its proposed language regarding a single POI in a LATA.

15. There is no basis for Level 3's proposal to establish a single POI in an area outside of the LATA SBC-Long Distance (SBC-LD) can deliver inter-LATA Access traffic for customers that have pre-subscribed to SBC-LD for Inter-LATA Access calls.

16. SBC-LD is not the SBC Incumbent Local Exchange Carrier subsidiary.

17. SBC ILEC companies, with the exception of traffic that originates and terminates within a Waivered Inter-LATA Local Calling Area (WLCA), cannot carry traffic outside of a LATA. SBC must deliver such traffic to an IXC.

d. NIM Issue 3

1. A CLEC does not pay for all of the facilities used in the interconnection.

e. NIM Issue 4.

1. Deploying transport facilities has costs and those costs increase relative to distance. Level 3 seeks is to avoid its costs associated with interconnection and, as much as possible, shift those costs to SBC.

2. Any reduction in costs associated with a single POI would be strictly beneficial to Level 3 and would, in fact, increase the costs to SBC.

3. There is a quantifiable cost differential for transport associated with POI Selection.

4. Transport from the Level 3 switch to the POI is not similar to the transport beyond the SBC tandem switch to other tandem or end office switches.

5. The facilities Mr. Wilson refers to with respect to Level 3 are those transmission facilities.

6. Level 3 believes that it should not have to mirror SBC's ubiquitous network, but fails to acknowledge the disparity in transport obligations that Level 3 would impose on SBC as a result of such disparity.

7. It is appropriate that, as the CLEC experiences growth, it should expand its network deployment to additional POI locations in order to equalize investment, this is consistent with the FCC's statement in the TRO that competing carriers have control over where to locate their network facilities to minimize self-deployment costs and that those costs should be incorporated "into their network deployment strategies rather than rely exclusively on the incumbent LEC's network."

8. SBC's proposed language provides Level 3 with a variety of options to interconnect, including a single POI.

9. SBC's position is more consistent with the goals of the Act to promote true facilities-based competition.

f. NIM Issue 5.

1. The NIM (Network Interconnection Methods) Appendix is intended to deal primarily with the facilities required for the overall Network Architecture that the Parties must implement in order to exchange local traffic for the benefit of both Parties' end users.

2. The Interconnection Agreement does not govern the facilities that support Ancillary Services trunk groups, IXC-carried traffic, or Transit Traffic. These facility costs are governed by the state and federal tariffs.

5. The facilities used to carry these types of traffic are used solely for the purpose of providing services originated by Level 3's end users, provided for Level 3's end users, for which Level 3 is compensated for by its end users. These facilities provide little or no benefit to SBC's customers.

6. Level 3 end users originate the traffic associated with Ancillary Services, IXC carried traffic, or Transit Traffic, these types of traffic do not originate from SBC end users and SBC's end users receive little or no benefit from these types of traffic.

7. Level 3's proposed language shows that Level 3 wants other types of traffic to be governed by the Interconnection Agreement that are currently governed by the tariff.

8. The local interconnection arrangement for local traffic should only be used in cases where either companies' end users can originate traffic over those facilities and derive benefit from them.

g. NIM Issue 6.

1. "911" trunk groups refer to the trunks used to deliver Emergency Service calls to the appropriate 911 tandem that serves the calling customer's line. By law, these trunks are required of any telecommunications company with customers that are able to originate calls as a matter of public safety.

2. "Mass Calling" trunk groups refer to trunks used to deliver High-Volume Media-Stimulated (HVMS) calls to a choke network. These trunk groups ensure the reliability of the Public Switched Telephone Network during times of high volume calling, or High Volume Call-In (HVCI).

3. "Meet-Point" trunk groups refer to the trunks used to deliver Inter-LATA calls, originated by customers, to the appropriate IXC presubscribed by the customers to handle inter-LATA calls.
8. Level 3 is not willing to pay for facilities needed to provide these services to their customers.
9. Level 3 is responsible for ancillary service facilities from their switch all the way to the service provider.

4. Level 3's ancillary services are solely for the benefit of Level 3's customers, and not SBC customers. Level 3 is not required to use Ancillary Services provided by SBC. Level 3 is free to use any ancillary service provider it wishes to use.

h. NIM Issue 8.

1. SBC does not have an obligation to provide for interconnection through unbundled dedicated transport.

2. Level 3 is confusing its rights to access UNEs under Section 251(c)(3), for the purpose of providing a telecommunications service, with an incumbent LEC's obligations to provide interconnection under Section 251(c)(2) for the exchange of Section 251(b)(5) traffic between the requesting carrier and the incumbent LEC. These are two separate and distinct requirements of the Act.

3. The FCC, in rendering its decision in the TRO, narrowed the definition of UDT to transmission facilities connecting incumbent LEC switches and wire centers within a LATA and expressly rejected their prior definition of UDT.

4. SBC is not obligated to provide Level 3 with facilities as unbundled dedicated transport (UDT) when they do not meet the FCC's definition of UDT.

5. SBC is not required to provide unbundled network elements outside of SBC's local network.

6. Any access to UNEs that Level 3 requests from SBC on SBC's network should be limited to Level 3's rights under Section 251(c)(3) for the purpose of providing a telecommunications service.

7. SBC's obligations under Section 251(c)(2) are to provide interconnection, which is the physical linking of Level 3's (the requesting carrier) network to SBC 's network for the mutual exchange of traffic and does not constitute the provision of a telecommunications service.

8. Level 3's proposal incorrectly interprets and expands SBC's obligations under Section 251(c)(2) of the Act to include providing the facilities and equipment for interconnection and the FCC's TRO reflected rule changes affecting the issue of interconnection via UDT.

i. ITR Issue 2

1. Feature Group D trunk groups should be utilized for interLATA traffic and intraLATA traffic carried by an IXC. This enables SBC to properly bill the originating carrier.

2. Local Interconnection trunk groups and meet point trunk groups do not carry the same types of traffic.

3. To ensure that Level 3 and SBC are properly compensated for local, intraLATA Exchange Access, and interLATA Exchange Access, these different traffic types must be routed on separate trunk groups.

4.

5. Level 3 should first establish a Point of Interconnection ("POI") with SBC in the LATA. Trunk groups are then established on these facilities so traffic can be exchanged between the two networks.

6. Each SBC tandem serves its own set of end offices.

7. If Level 3 only establishes a trunk group to the tandem that is near the POI, only those calls to SBC end users that are behind that tandem can be efficiently delivered. These calls are switched once by the first tandem to the end user's end office for completion.

8. Calls destined for SBC end users behind other tandems must be switched at the first tandem to redirect the call to the proper tandem, then switched a second time at the second tandem to the end user's end office for completion.

9. Level 3 connecting to only one SBC tandem is not an efficient method of delivering calls from Level 3 to the other SBC end users in the LATA. This method places an immediate burden on SBC in the form of additional points of switching and additional tandem trunk ports for each call to the distant tandems.

10. Re-directing Level 3's traffic from one tandem to another can accelerate tandem exhaust, leading to more frequent tandem switch growth jobs and the need to purchase additional tandems.

11. When Level 3 establishes direct trunk groups to every SBC Tandem within the LATA, the network functions more efficiently.

12. Level 3 should route traffic, according to the Local Exchange Routing Guide (LERG), to the appropriate serving tandem switch, the most efficient use of tandem switch resources.

13. Trunking to every tandem does not increase the cost of facilities to LEVEL 3.

14. InterLATA Access and IP-Enabled traffic are compensated differently from Section 251(b)(5) traffic, which is subject to Reciprocal Compensation.

15. Combining traffic as suggested by Level 3 would lead to blocked calls due to improper routing of the calls.

16. In order to provision a local tandem into an Access tandem, it requires building Carrier Interconnect Codes (CIC) that identify each IXC into the tandem that operate in that LATA, as well as each IXC that provides service in the LATA will have to interconnect at the tandem. It typically takes a couple of years to complete this type of project.

17. If a carrier delivers Inter-LATA type traffic to a Local Interconnection Trunk Group, rather than to an Access Tandem, those calls will not be properly billed as Inter-LATA calls, rather, those calls will be billed as if they are local interconnection calls, and one carrier or the other will not receive proper compensation for those calls.

18. Traffic is more easily tracked and billed when segregated according to the traffic type and how the tandems are provisioned. Access traffic needs to be routed on a segregated trunk group so it can be properly tracked and billed. The types of trunk groups will depend on the type(s) of tandem(s) from which the end user's serving end office homes.

19. While it is possible to establish a percentage for local, interstate, or IP calls, this percentage would be only a guess, at best, with revenue streams of both companies at stake.

20. There is risk of CPN modification with the newer VOIP technology, so any billing system that would use CPN to determine the jurisdictional nature of a call may be fooled, with resultant loss of compensation revenue. A traditional circuit switching system cannot modify CPN, although newer technologies can easily change or delete CPN. Software limitations prohibit both companies from being able to properly identify the traffic they are receiving over combined trunk groups.

21. SBC makes terminating billing records on incoming trunk groups. All traffic that is sent over a single trunk group will generate the same type of billing record, this is where the opportunity for fraud exists. Without the ability to identify the traffic, the Parties are left no choice but to accept the word of the other as to the true jurisdictional nature of the traffic. Separate trunk groups allows for traffic to be accurately recorded and then properly billed.

22. In combining Section 251(b)(5) and IntraLATA traffic with InterLATA Access Traffic, Level 3 leaves it to SBC to detect Level 3's high-cost calls. This would make it very difficult for SBC to properly assess reciprocal compensation or Access charges for the traffic coming over such a combined group.

23. Billing problems are the single largest problem of combining access traffic onto a local trunk group. If it were not for the risk of withholding CPN or the modification of CPN, the billing issue would not be as significant.

24. When carriers send combined traffic, they are to compensate one another based on traffic studies. In the absence of those studies, an assumed factor, such as a percent of local usage (PLU), will be substituted. The traffic studies are impossible to produce without first measuring

the segregated traffic patterns. Once a combined architecture is instituted, follow-up studies are impossible to conduct since there is no way to separate and measure the traffic. With today's technology, the only way to prevent fraud is to establish segregated trunk groups.

j. ITR Issue 4(b).

1. Level 3 is confusing financial responsibility for transport, which is a NIM issue, with trunking obligations. The NIM addresses the facilities aspect of the network, including the financial responsibility for those facilities, and does not address trunks or any responsibilities surrounding trunks. The ITR addresses trunk requirements. Financial responsibility for trunks is not related to SPOI.

k. ITR Issue 11(a).

1. Level 3 is confusing POI, which involves the facilities required for the physical linking of two networks, with trunks. Trunking establishes the paths for the exchange of traffic between the switches on the networks. Level 3 seeks to redefine "interconnection" and "POI" to include the transport and termination of traffic. The facility between Level 3 and SBC that establishes the POI (i.e. the "physical linking") has nothing to do with the trunking by which Section 251(b)(5) traffic is exchanged between Level 3 and SBC.

2. The fact that Level 3 physically links to the SBC network via a POI does not relieve Level 3 of its obligation to establish trunks to the SBC network where Level 3 seeks to offer service.

3. The cost to Level 3 does not always increase as the number of trunks increases. There is a relationship between the number of trunks and the amount of facilities required, but the cost does not always increase in direct relation to the size of the facility.

4. At first, Level 3 may only need one or two DS1s. As Level 3's trunk requirements begin to exceed a group of 24 trunks, additional DS1 facilities are required. There comes a time when it is more cost effective for Level 3 to jump from a group of DS1 facilities to a single DS3 facility.

l. ITR Issue 11(b).

1. Level 3 should establish separate trunk groups for IXC carried traffic and Section 251(b)(5)/IntraLATA traffic. This allows for proper tracking and billing.

m. ITR Issue 12(a)

1. Direct End Office Trunk Groups (DEOTs) are established between two end offices and only carry Section 251(b)(5) traffic destined for those end office switches. Only traffic that is originated by the end users connected to one end office switch, destined for the end users connected to another end office switch, is routed over a trunk group between those two end office switches.

2. Trunk capacity at SBC End Office switches is designed for NPA NXX codes that are homed at that End Office switch. SBC End Office switches are not designed to perform a tandem function.

3. DEOTs are used to alleviate tandem exhaust issues where traffic levels between end office switches are sufficient enough to merit direct trunks.

4. SBC engineers each of its end office switches to handle the traffic and switching requirements needed to provide service to only the end users that are connected to each particular office.

5. Calls destined for end users that are in an office other than the office at the terminating end of a direct trunk group should be routed to the proper office. Misrouting calls over a direct trunk group forces an end office to function like a tandem. This results in network resources for that switch being used at a faster-than-planned rate, as well as more resources than what are really required being purchased by SBC.

6. SBC purchases, administers, and maintains end office switches to function only as end office switches - not as tandem switches. Tandem switches perform functions that cannot be performed by an end office switch. Forcing an end office switch to function like a tandem reduces the level of service provided to end users.

7. Routing calls directly from one end office switch to the other end office switch by way of a DEOT eliminates the need to route through the serving tandem, thereby conserving tandem resources. Typically, a DEOT is established between two SBC end office switches when the amount of traffic, or call volume, between these two offices reaches an offered load level that is equivalent to 24 trunks during a 20-day Average Busy Hour at the tandem. DEOTs help conserve tandem switch and trunk resources, making the network more efficient. This is consistent with SBC's policy regarding DEOTs for itself, its affiliates, or other carriers.

n. ITR Issue 13

1. Level 3 seeks to shift its responsibility for Meet Point traffic provided solely for the benefit of Level 3's end users to SBC. Meet point traffic and trunking as defined by LEVEL 3 do not qualify for inclusion in an ICA. Meet Point Traffic involves Circuit Switched Telephone Toll and/or Exchange Access Traffic sent to or received from interexchange carriers. Meet point traffic benefits Level 3 and Level 3's end users and would provide no value to SBC's or its end users. Meet Point Traffic is access calls for the benefit of Level 3 end users, which neither originate nor terminate on SBC's network.

2. Transporting of Level 3 end user access traffic is Level 3's responsibility (on behalf of its end users) and should be identified as such in the ICA.

3. SBC end users are not able to originate or terminate calls over Level 3's operator services / directory assistance (OS/DA), 911, mass-calling and meet-point trunk groups. These

trunk groups are specifically designed to serve Level 3's end users and are solely for the benefit of Level 3's end users and Level 3.

4. Meet-point trunk groups, involve Circuit Switched Telephone Toll and/or Exchange Access Traffic sent to or received from interexchange carriers.

o. ITR Issue 14(c)

1. Virtual NXX (VNXX) is where an NXX is opened for a rate center in which the customer has no physical location within the geographical area of the rate center. In VNXX, a carrier opens a code in an exchange without any equipment or physical presence within the community of interest, thus the term virtual. VNXX is typically used in order to offer ISP service to a community remotely. The Virtual NXX architecture CLECs propose would force all calls from the originating exchange to be transported to a POI of some distance, so that the CLEC or its customer can shift the cost of transporting these calls to SBC.

2. The customer does not even reside in the community where the NPA-NXX is being FXed from, hence its "virtual" nature. In reality Level 3 attempts to pass the cost of transporting FX traffic for their end users onto SBC. In the context of Internet Service Providers using VNXX, this call scenario is indeed like a long distance call and access charges are appropriate.

p. ITR Issue 15(a)

1. The term Telecommunications Traffic is too broad and does not define the type of traffic being discussed.

q. ITR Issue 15(b)

1. From a technical aspect, double tandeming switched access calls cannot be done.

2. Originating switched access traffic has a unique call format referred to as Equal Access. The Equal Access formatted call must be sent directly to an IXC Class 3 or higher tandem switch in order for the call to complete.

3. Class 4 tandems are not capable of receiving Equal Access formatted calls from another Class 4 tandem, nor can a call sent from an End Office to a Class 4 tandem switch be forwarded to another Class 4 tandem switch.

r. ITR Issue 16(a)

1. 800/8YY traffic is subject to switched access charges and therefore should not be routed over Local Interconnection Trunk Groups.

s. ITR Issue 16(b)

1. It is appropriate for traffic to be routed over the appropriate trunk group type.

t. ITR Issue 16(c)

1. In order to perform an 800/8YY query, Service Switching Point (SSP) software must be loaded into each switch that is to perform that function. The SSP software has been purchased and implemented in all of SBC's network, so therefore SBC would never pay another carrier to perform this function.

u. ITR Issues 5, 6, 7, 8, & 9; OET Issue 5(e):

1. Transit traffic is not a Section 251/252 obligation.

2. Transit traffic is telecommunications traffic between originating and terminating carriers that is transported between the originating and terminating carriers over the network of a third party carrier.

3. Transit traffic is neither originated from nor terminated on the third party carrier's network. All carriers have the duty under Section 251(a) of the Act to interconnect directly or indirectly with other carriers for the purpose of exchanging Section 251(b)(5) traffic. This agreement between Level 3 and SBC is only for the exchange of traffic between Level 3 and SBC pursuant to Sections 251 and 252 of the Act, including Sections 251(b) and 251(c).

4. Level 3's transit traffic neither originates from nor terminates on SBC's network and, as such, does not create a Section 251/252 obligation subject to this agreement.

5. Section 251(B)(5) traffic does not include transit traffic. Transit traffic is traffic that is neither originated by nor terminated to an SBC end user. Transit traffic cannot be considered Section 251(b)(5) traffic because it is not between the originating carrier and the terminating carrier end users covered by this agreement. Defining transit traffic as Section 251(b)(5) traffic – as Level 3 seeks to do – would shift switching, transport, and reciprocal compensation obligations to the transiting carrier instead of the originating carrier.

6. The plain language of Section 251(b)(5) of the Act and existing FCC regulations refute Level 3's proposal to include terms and conditions related to transit traffic in the interconnection agreement.

7. SBC has included a definition of Section 251(b)(5) traffic in this agreement that complies with the Act and the FCC's prior rulings. Section 251(c)(2) does not include an obligation on SBC. Transit Service is a non-251/252 service, and as such is not an arbitrable issue. Nothing in the Act or the FCC's rules requires SBC to provide transiting service.

8. SBC does not intend to cease providing transit service. SBC will continue to transit traffic originated by Level 3. But, SBC should be permitted to do so pursuant to an agreement other than an ICA.. A separate transit agreement as proposed by SBC would not cause Level 3 or other carrier to build an expensive, but little used, network.

9. The Transit Agreement proposed by SBC clearly defines the threshold at which Level 3 would establish a separate DEOT for traffic exchanged between Level 3 and a third party carrier. Once Level 3 is exchanging traffic with another carrier at the DEOT threshold, it is appropriate for Level 3 and the other carrier to enter into a separate interconnection agreement and cease to rely on SBC's network. once traffic between Level 3 and a third party carrier exceeds the DEOT threshold, it is appropriate that Level 3 and the other carrier move their traffic off SBC's tandem. The fact that SBC provided transit as part of its ICA agreements in the past because of previous interpretations of the Act and subsequent rules is not sufficient to require SBC to continue to do so today, now that SBC's obligations under the Act have been more clearly defined.

10. Because of changes in technology (e.g., VoIP), recent instances of CPN alteration, manipulation, and exclusion, as well as claims by independent and rural LECs and CLECs that SBC, as the transit provider, should be responsible for paying reciprocal compensation for traffic where CPN is unavailable, a separate Transit Agreement is more appropriate.

11. CLECs are seeking to shift their reciprocal compensation obligations as originating carriers to SBC as the transiting provider.

12. The Local Exchange Routing Guide (LERG) identifies the proper routing for the purpose of delivering that traffic. The LERG is used to identify end offices and local, access, and combination local/access tandems, and it is the industry accepted routing guide established for efficient planning and routing of telecommunications traffic. Routing per the LERG is necessary to allow carriers to design and manage their networks in the most efficient manner.

20. A local tandem is designed and engineered to primarily support local traffic.

21. An access tandem is designed and engineered to primarily support long distance intraLATA / interLATA toll access traffic, this information is maintained in the LERG to assist carriers with identifying the proper routing for the purpose of delivering telecommunications traffic to the appropriate local or access tandem.

22. Transiting is not a 251/252 obligation subject to this ICA SBC should not be held liable for reciprocal compensation for transited traffic on behalf of originating carriers that change, alter, modify or withhold CPN.

v. OET Issue 4(a)

1. The OET Appendix reflects SBC's obligations relating to traffic (OET Traffic) that originates or terminates with a Level 3 end user outside of SBC's local exchange area.

2. SBC administers its network to ensure acceptable service levels to all users of its network services. In doing so, SBC ensures that no harm or damage is done to other carriers' networks, and does not interfere with the service of other CLEC's end users.

w. OET Issue 4(b):

1. The ITR deals with traffic where SBC is a registered ILEC, while the OET Appendix deals with traffic outside of SBC's territory. The same reasons that this language is appropriate in the ITR Appendix apply to the OET Appendix. The ITR deals with traffic where SBC is a registered ILEC, while the OET Appendix deals with traffic outside of SBC's territory. Level 3 does not suggest otherwise.

x. OET Issue 4(c)

1. The parties agreed to language identical to Section 3.6 in ITR Section 10.3.1. The ITR and OET Appendices are different. The ITR deals with traffic where SBC is a registered ILEC, while the OET Appendix deals with traffic outside of SBC's territory. Level 3 does not suggest otherwise.

y. OET Issue 5(a)

1. Agreed-to language in Section 4.1 indicates that the Parties will exchange traffic to points of interconnection (POIs) according to Appendix NIM of this Agreement.

a-2. OET Issue 5(d)

1. This issue is similar to ITR Issue 12. The OET Appendix should provide that Level 3 will establish a DEOT when the amount of traffic reaches a certain threshold. DEOTs help conserve tandem switch and trunk resources. This makes the network more efficient.

2. SBC establishes DEOTs for itself under similar, but more stringent, guidelines, and also requires its affiliates to establish DEOTs at a 24 trunk threshold. It is not more efficient to transit traffic through third parties as Level 3 asserts in its position statement. It is only more efficient for Level 3 because in these instances third parties are left to carry the freight on Level 3's behalf. There is inherently more transport and / or more stages of switching involved in transiting than there would be to direct trunk between carriers.

b-2. OET Issue 8(a)

1. Level 3 offers only a vague reference to the ITR Appendix.

2. While the POI establishes the point at which SBC and Level 3 facilities meet to interconnect our two networks, trunk groups are established on these facilities so traffic can be exchanged between the two networks.

3. If Level 3 only establishes a trunk group to the tandem that is near the POI, only those calls to SBC end users that are behind that tandem can be efficiently delivered. Calls to such end users are switched once by the first tandem to the end user's end office for completion.

4. Calls destined for SBC end users behind other tandems must be switched at the first tandem to redirect the call to the proper tandem, then switched a second time at the second tandem to the end user's end office for completion.

5.. Having Level 3 connect to only one SBC tandem is not an efficient method of delivering calls from Level 3 to other SBC end users in the LATA. This method places an immediate burden on SBC in the form of additional points of switching and additional tandem trunk ports for each call to the distant tandems. Re-directing Level 3's traffic from one tandem to another can accelerate tandem exhaust, leading to more frequent tandem switch growth jobs and the need to purchase additional tandems. When Level 3 establishes direct trunk groups to every SBC tandem within the LATA, the network functions more efficiently.

c-2. OET Issue 8(b)

1. SBC's End Offices are not designed to serve a tandem function. Only traffic that is originated by the end users connected to one end office switch, destined for the end users connected to another end office switch, is routed over a trunk group between those two end office switches.

2. Trunk capacity at SBC End Office switches is designed for NPA NXX codes that are homed at that End Office switch.

3. DEOTs are used to alleviate tandem exhaust issues where traffic levels between end office switches are sufficient enough to merit direct trunks. SBC engineers each of its end office switches to handle the traffic and switching requirements needed to provide service to only the end users that are connected to each particular office.

4. Calls destined for end users that are in an office other than the office at the terminating end of a direct trunk group should be routed to the proper office. Misrouting calls over a direct trunk group forces an end office to function like a tandem. This results in network resources for that switch being used at a faster than planned rate.

5. SBC purchases, administers, and maintains end office switches to function only as end office switches – not as tandem switches. Tandem switches perform functions that cannot be performed by end office switches. Forcing an end office switch to function like a tandem reduces the level of service provided to its end users.

d-2. OET Issue 9; OET Issue 11(a)

1. "Section 251(b)(5) Traffic" is telecommunications traffic, including "ISP-Bound Traffic" exchanged between Level 3 and SBC in which the originating end user of one Party and the terminating end user, or ISP of the other Party are:

(i) both physically located in the same SBC Local Exchange Area as defined by SBC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or

(ii) both physically located within neighboring SBC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.

2. The use of "ISP-Bound Traffic" is consistent with the FCC's Order on Remand Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, SBC's definition of Section 251(b)(5) traffic in this agreement complies with the Act and the FCC's prior rulings.

e-2. OET Issue 11(b); OET Issue 12

1. SBC routes its own Inter-LATA Section 251(b)(5) and ISP Bound Traffic over two-way Direct Final ("DF") trunk groups that SBC creates specifically for that purpose. The only traffic routed over this two-way DF trunk group is traffic that originates and terminates within the same InterLATA Extended Area Service (EAS) local calling area.

2. SBC is restricted by the MFJ and the FCC as to the methods by which an ILEC can deliver InterLATA EAS local traffic. Any method agreed upon by Level 3 and SBC to exchange InterLATA EAS local traffic must be in compliance with these restrictions.

f-2. IC Issue 3

1. SBC's definition of Section 251(b)(5) traffic in this agreement complies with the Act and the FCC's prior rulings. The term "section 251(b)(5) traffic" is not newly crafted by SBC. The use of these terms is consistent with the FCC's characterization of traffic.

g-2. IC Issue 17

1. Intrastate/IntraLATA toll traffic that is not presubscribed to an IXC is carried by SBC on behalf of SBC end users, and is carried by Level 3 on behalf of its end users.

h-2. GT&C DEFINITION 1

1. The language SBC has proposed accurately defines the function of a tandem switch

i-2. GT&C DEFINITION 9(a)

1. A "Local/Access Tandem" is a tandem that handles Local traffic as well as Intra-LATA and Inter-LATA IXC traffic.

2. SBC employs many different types of tandems, some of which either cannot handle IXC traffic or cannot effectively accommodate interconnection with CLECs. SBC disagrees with Level 3's proposed definition of a Local/Access Tandem because it does not account for the type

of traffic handled by the tandem. Level 3's definition of Local/Access tandem applies to any tandem SBC utilizes- including those that cannot accommodate CLEC interconnection.

3. Tandems handle specific types of traffic and are often unable to handle other types of traffic. Some of SBC's tandems cannot handle IXC traffic. SBC's Local Only tandems cannot handle IXC calls

j-2. GT&C DEFINITION 9(b)

1. SBC's proposed definition does not create any additional obligations for Level 3, it simply defines the term "Local/Access Tandem."

k-2. GT&C DEFINITION 10(b)

1. SBC engineers and bills its Local Interconnection Trunk Groups specifically to handle only Section 251(b)(5)/IntraLATA and IXC carried traffic. SBC believes Local Interconnection Trunk Groups must be defined to insure that only Section 251(b)(5)/IntraLATA and IXC carried traffic is offered to those groups. SBC's proposed definition does not create any additional obligations for Level 3.

l-2. GT&C DEFINITION 11(a)

1. A "Local/IntraLATA Tandem Switch" is a tandem that handles Section 251(b)(5) Local traffic as well as Intra-LATA toll traffic, but it does not handle IXC carried traffic.

m-2. GT&C DEFINITION 11(b)

1. SBC's proposed definition does not create any additional obligations for Level 3

n-2. GT&C DEFINITION 12(a)

1. A "Local Only Tandem Switch" is a tandem that handles only Local traffic, it does not handle Intra-LATA or Inter-LATA IXC carried traffic.

o-2. GT&C DEFINITION 12(b):

1. SBC utilizes Local Only Tandem Switches in 10 of the states in which it operates.

2. SBC designs and provisions Local Only Tandem switches to handle Section 251(b)(5) non-Intra-LATA local and ISP Bound traffic only.

3. A local only tandem switch is not capable of supporting IXC carried access traffic.

4. SBC's proposed definition does not create any additional obligations for Level 3.

p-2. GT&C DEFINITION 13

1. SBC's defines Local Only Trunk Groups as “two-way trunk groups that carry Section 251(b)(5) Traffic only.”

q-2. GT&C DEFINITION 14(a):

1. A “Local Tandem Switch” is a term that identifies any type of tandem that handles local traffic and serves a specific Local Calling Area (LCA). A Local Tandem can be a Local Only, a Local/IntraLATA, or a Local/Access Tandem.

2. Only SBC is aware of how its network architecture is deployed and the Commission should not allow Level 3 to define it as a hypothetical superior network.

r-2. GT&C DEFINITION 14(b):

1. Level 3 contradicts itself by, one the one hand, complaining that SBC’s definition of “Local Tandem” is too generic and, on the other hand, proposing one overly-broad, generic definition of “Tandem Switch” to cover all the types of tandem switches. it would be inappropriate to use one broad definition for all tandem switches.

2. Different types of tandem switches carry different types of traffic and each type tandem should be defined accordingly.

3. SBC’s existing network architecture, including its tandem switches, are planned, forecast, designed, and engineered to serve specific functions in support of SBC’s end users, as well as the end users of requesting carriers that interconnect to SBC’s network.

4. It is inappropriate for Level 3 to define equipment within SBC’s network architecture to fit Level 3’s needs and in a manner inconsistent with how SBC deploys its network.

s-2. GT&C DEFINITION 21(a):

1. Virtual NXX (VNXX) is where an NXX is opened for a rate center in which the customer has no physical location within the geographical area of the rate center. In VNXX, a carrier opens a code in an exchange without any equipment or physical presence within the community of interest, thus the term virtual. VNXX is typically used in order to offer ISP service to a community remotely. The Virtual NXX architecture CLECs propose would force all calls from the originating exchange to be transported to a POI of some distance, so that the CLEC or its customer can shift the cost of transporting these calls to SBC. The customer does not even reside in the community where the NPA-NXX is being FXed from, hence its “virtual” nature.

t-2. GT&C DEFINITION 21(b):

1. FX Telephone numbers, as deployed in SBC’s network, are used to give SBC end users local dialing to exchanges that would normally be toll. Under this scenario, the end user’s line is extended to the foreign exchange end office where dial tone is provided. The end user that has

purchased the FX service pays for the facilities necessary to extend his line to the foreign exchange.

2. SBC is responsible for call delivery and is appropriately compensated by the FX end user for delivering the call from the end user in the foreign exchange.

3. Level 3's Virtual NXX, on the other hand, places the responsibility for delivering the call from the end user in the foreign exchange to the VNXX end user onto SBC. As a result, SBC is unable to recover its cost for delivery of what would normally be a toll call, for which SBC would be compensated at Access rates.

IX. SBC Illinois witness McPhee

a. Intercarrier compensation Issues 1, 3 AND 10a; GT&C definitions Issues 18a and 18b)

1. Section 251(b)(5) traffic originates from an end user and is destined to another end user that is physically located within the same ILEC mandatory local calling scopes. ISP-Bound Traffic originates from an end user that is served by an Internet Service Provider (ISP) physically located within the same ILEC mandatory local calling scope.

2. Note that the FCC used these terms instead of the potentially ambiguous term "Local Traffic" it had used in past rules (and which led to disputes over the proper interpretation of prior interconnection agreements).

3. The rating, or jurisdiction, of a call is based on a geographic determination system that classifies calls as local, intraLATA toll or interLATA toll. Each phone number or NPA NXX (area code and three digit central office prefix) has a designated geographic point within an exchange and is assigned to a rate center.

4. Calls which require 1+dialing are generally carried beyond the local calling area as defined by the local exchange tariff and thus are not subject to local rating. the jurisdictional nature of the call, as determined by the rating previously discussed, determines whether reciprocal compensation applies. The jurisdiction of a call is determined by its (wholesale) end to end use, not its (retail) rating point.

5. The jurisdiction of a call is determined on an end to end basis, not on the artificial rating points of a call, to transparently permit the originating end user to pay a "local charge".

6. Level 3 does not dispute the use of SBC's traffic terminology.

b. IC Compensation Issues 5, 21a; GT&C Definitions Issue 8

1. SBC proposes defining "ISP-Bound Traffic" as traffic that originates from an end user and is delivered to an ISP within the same mandatory local calling area. From there, the traffic proceeds to distant Internet web sites and applications. This definition is consistent with the definition of ISP-bound Traffic in the ISP Remand Order.

2. Prior to 2001, there was little agreement on the definition of ISP-bound traffic or the compensation for the termination of such traffic.

3. In the ISP Remand Order, the FCC distinguished between two types of traffic. First, the FCC identified Section 251(b)(5) traffic, or voice traffic, that originates and terminates to end users located within the same mandatory local calling areas. 4. The FCC identified ISP-Bound traffic, found that it was excluded from Section 251(b)(5), and established a plan for compensation.

4. The FCC did not address all traffic that is delivered to an ISP, rather, the ISP Remand Order targeted only a narrow category of ISP traffic.

5. The FCC repeatedly states that it is dealing only with traffic that would otherwise be subject to state commission-established reciprocal compensation.

6. ISP traffic that originates and is delivered to an ISP within the same local mandatory calling areas is ISP-bound Traffic subject to the FCC Plan. ISP traffic that is delivered to an ISP outside the originator's local mandatory calling area is not ISP-Bound traffic subject to the FCC Plan. Such ISP traffic remains intraLATA and/or interLATA toll traffic subject to access tariffs. Only calls that originate from an end user and are delivered to an ISP within the same ILEC mandatory local calling area are subject to the FCC Plan.

c. Out of Exchange traffic Issue 9; GT&C definitions Issue 17a

1. Appendix Out of Exchange Traffic ("OET") is an additional provision of the underlying Agreement, and as such, should use the same definitions for the types of traffic as exchanged under other sections of the Agreement, namely Appendix Intercarrier Compensation.

2. Appendix OET contemplates the exchange of traffic between SBC and Level 3 that originates or terminates in regions that are not within SBC's incumbent LEC territory. There is a need to address this type of traffic separate from traffic exchanged under Appendix Intercarrier Compensation, the traffic types remain the same, and should be defined the same throughout the entire ICA and all its related appendices.

3. OET Section 5.1 (Issue OET-9) references terminology in Appendix OET that should refer to Section 251(b)(5) Traffic instead of Level 3's proposed and vague "Telecommunications Traffic" and "IP-Enabled Traffic" nomenclature. the definition of "Out of Exchange Traffic" in the GT&C Definitions should refer to "Section 251(b)(5) Traffic," "InterLATA Section 251 (b)(5) traffic" and "ISP-bound traffic," instead of "Telecommunications Traffic and IP-enabled Traffic."

d. IC Issues 6a, 12, 14, 20a

1. The parties will exchange other types of traffic that are not included within the terms of Section 251(b)(5) Traffic or ISP-Bound traffic. While the specific access rates are not listed within the Agreement here, the Agreement refers to the tariffs to provide the proper rates and terms to settle access traffic compensation payments.

2. Level 3 also attempts to confuse aspects of UNE-P usage charges with aspects of call-termination charges. These two types of charges are separate and distinct charges that are applied for different reasons, and are intended for SBC and the CLEC to recover different costs.

3. This Commission has already established separate rates for each of these functions: unbundled local switching for UNE-P usage charges, and reciprocal compensation for call termination charges. The Commission-established call termination charges are applicable to Section 251(b)(5) traffic regardless of whether it is facilities-based or UNE-P.

4. Nothing in the FCC's ISP Remand Order suggests that traffic originated through UNE-P usage should be treated any differently than facilities-based traffic.

e. IC Issue 11a

1. Foreign Exchange (FX) is the industry term for those calls that originate in one local exchange and terminate to another exchange that is not within the originating local calling scope. An FX call therefore travels to an exchange that is not local, called "foreign," to the originating exchange.

2. The key is that FX traffic is dialed by the originating caller as a local telephone number, and thus the dialing end user does not incur any toll charges for placing the call.

3. SBC offers FX service by retail tariff, basically charging the recipient of the FX call for the toll charges that would have applied if the FX call had been placed as an ordinary toll call.

4. SBC provisions its FX service via a dedicated circuit from the end office where the customer's NPA-NXX is actually assigned, to the end user's premise, which resides outside of the service area of the end office to which the NPA-NXX is actually assigned. Therefore, when another party calls that end user's telephone number, the call is routed to the proper resident end office switch, and from there the call is diverted over the dedicated circuit to the end user's remote location.

5. CLECs could establish competing FX service in the same manner as SBC, by building dedicated circuits to deliver dial tone outside the local calling scope. CLECs typically create an "'FX-type"' arrangement by reassigning the telephone number to a switch that is different than the 'home' central office switch where that NPA-NXX is assigned as a local number.

6. The CLEC tells the Code Administrator where it wishes to obtain numbers, and the Code Administrator goes to its database of available numbers for that location and makes the

appropriate NPA-NXX assignment. The Code Administrator keeps track of the NXX code assignments under a given NPA, watching for number exhaust and the need for new NPAs (i.e. area code splits or overlays). The Code Administrator does not check to see if the NPA-NXX code is actually deployed in that city. The CLECs take the assigned NPA-NXX code and, without telling the Code Administrator, deploy the NPA-NXX code in a switch miles away from the city in which it was assigned.

7. FX-like service enables CLECs to generate higher than normal reciprocal compensation traffic inbound to their network.

8. The end result of SBC's dedicated circuit FX service and the CLECs' FX-type service is the same: it allows an end user customer to be assigned a telephone number and to receive calls as if he or she was located in a given exchange, regardless of the physical location of that customer a CLEC can use FX-like service to generate artificially high intercarrier reciprocal compensation revenues from the originating network (SBC) without having to charge the CLEC subscriber for the benefits of the FX-like service.

9. Each local exchange carrier has the ability to define its own local calling areas for purposes of its retail calling plans, and SBC's proposed contract language so provides.

10. Bill and keep is the appropriate mechanism for both voice and ISP-Bound FX traffic.

f. IC Issue 11e and OET Issue 10

1. Transit traffic originates on the network of a third-party carrier, is handed off by that carrier to SBC, and then is handed off by SBC to a CLEC for termination on the CLEC's network. Transit traffic moves in the opposite direction as well, from that CLEC to a third party.

2. SBC charges the originating carrier a fee to transit the traffic, and the terminating CLEC is entitled to charge the originating carrier for services that it provides in completing the call.

3. Most transit traffic carries with it calling party originating information that includes the originating company's identity as part of the call setup information. SBC receives the identifying information from the originating carrier and passes that information along to the terminating CLEC when it hands the call off to that CLEC.

4. Based on the originating telephone number and other information, the terminating CLEC can identify the originating carrier and can charge the originating carrier the appropriate reciprocal compensation.

5. SBC merely serves as an intermediate provider of facilities over which traffic is transported; SBC neither originates nor terminates the traffic.

6. Transit traffic is not contained within the definition of Section 251 traffic, and therefore is not subject to inclusion within this ICA or its appendices transit traffic is not within the scope

of Section 251(b)(5). There is nothing in the Act that requires SBC to provide transiting services, SBC is only obligated to provide direct or indirect interconnection with its network.

7. The duty to provide indirect interconnection relates to the obligation to terminate traffic on SBC's network provided indirectly from another carrier Level 3's transiting service issues implicate neither of these forms of interconnection transiting service relates solely to Level 3's efforts to compel SBC to serve as an intermediary by transporting traffic between Level 3 and third party CLECs.

8. This transiting service does not constitute interconnection with SBC transiting service, which is nothing more than transporting traffic, does not involve "interconnection" with SBC's network, and SBC is not required to provide – or negotiate – such service Transiting service lies beyond the duties set forth in Section 251 and beyond this Commission's compulsory arbitration jurisdiction.

9. The terms of SBC's transit service are contained in a separate commercial agreement outside the scope of a Section 251/252 negotiation. The Transit Traffic Service Agreement is an offering made by SBC for CLECs to negotiate if they desire transit traffic service should not be part of the Section 251/252 negotiation process; rather it is an optional service that SBC negotiates separately with carriers.

g. IC Issue 13a

1. Under the ISP Remand Order, an Incumbent LEC such as SBC can utilize the new rate caps and growth caps for ISP-Bound Traffic if the ILEC offers to exchange all Section 251(b)(5) traffic at that same lower rate – now $0.0007 per MOU. The FCC established the first option so that CLECs could elect to be paid at the state Commission-approved rate for Section 251(b)(5) traffic and the lower "FCC Plan" rate for ISP-Bound traffic. The FCC established the second option so that certain carriers that terminate more traffic to the ILEC, including CMRS providers, would be able to benefit from lower reciprocal compensation payments.

2. The interconnection agreements must include language allowing for the possibility that a CLEC may want to accept that offer the FCC Plan rate of $.0007 properly applies to all ISP-Bound traffic.

3. Level 3 is electing to exchange traffic under the FCC ISP Compensation plan for all applicable traffic at the ISP rate of $0.0007 per MOU.

4. Since SBC has invoked the FCC's ISP compensation plan pursuant to their ISP Remand Order, ISP-Bound traffic is subject to the terms and conditions of that order and therefore, rates, terms and conditions relative to the plan should be included in this agreement so as to minimize the potential for disputes in implementation of the plan.

5. Since SBC has invoked the FCC ISP plan in this State, ISP-Bound traffic is no longer subject to Intercarrier Compensation at the state approved rates for reciprocal compensation. ISP-Bound traffic is compensated in accordance with the FCC ISP compensation order.

6. Level 3 agrees that the FCC ISP plan rates and terms apply to ISP-Bound traffic.

h. IC Issue 13c

1. SBC's proposed contract language contains terms for the compensation of Section 251(b)(5) traffic and ISP-Bound traffic at the FCC Plan rate, there are still circumstances where some traffic will be subject to a bill and keep arrangement as provided for in the ISP Remand Order.

2. The ISP Remand Order expressly provides that bill and keep will apply in certain instances, it did so to cure certain marketplace distortions caused by the advent of dial up access to the internet. The FCC put in place mechanisms to reduce CLECs' reliance on this type of compensation as a means of revenue (instead of cost-recovery). In addition to lowering the rate paid for the termination of ISP-Bound Traffic, the FCC found that bill and keep was the appropriate compensation mechanism for ISP-Bound Traffic in two instances: (a) new market entry and (b) when a carrier's ISP-bound traffic exceeds the growth caps established in the ISP Remand Order. The FCC based this rule on its plan to ultimately transition all ISP Bound Traffic to a bill and keep basis.

3. In the case of a newly opened market, there is no reason to institute intercarrier compensation for ISP Bound Traffic, since there has been no prior history or reliance on that scheme in the new market. The FCC found that bill and keep was the appropriate compensation mechanism when a carrier's traffic exceeds the growth cap on ISP-Bound Traffic.

i. IC Issue 13b

1. All the ISP-Bound MOUs compensated by the parties should apply toward the ISP MOU growth cap under the ISP Remand Order.

2. The FCC implemented the MOU growth caps in order to address the market distortions they describe in the Order. The growth caps in the FCC Plan continue into 2004 and thereafter until further FCC action. The intent of the FCC ISP Compensation Order was to provide a transition from the current reciprocal compensation payments for ISP-Bound Traffic. To the contrary, while the FCC Plan outlined in the FCC ISP Remand Order is an interim measure, it is intended to remain in place until the FCC completes a further examination of inter-carrier compensation under the Notice of Proposed Rulemaking, FCC 01-132. The ISP Remand Order compensation plan addresses a specific remedy for the treatment of traffic in a "new market," those terms should be embodied in the Agreement.

3. Pursuant to Paragraph 81 of the ISP Remand Order the FCC established new market restrictions on ISP-Bound minutes whereby if the Parties had not exchanged ISP-Bound Traffic in any one or more LATAs in a particular state prior to April 18, 2001, Bill and Keep will be the reciprocal compensation for all ISP-Bound Traffic between the Parties for the remaining term of this Agreement in any such LATAs in that state. Without such specific terms, which were

intended by the FCC to be included under their ISP compensation plan, then the contract would be incomplete.

4. The FCC ISP Remand Order provides that when a carrier enters a "market" or an existing carrier expands into a "market" where it previously had not provided service, such carriers will exchange ISP-Bound Traffic on a bill and keep basis. The FCC did not provide a definition of a "market" in the ISP Compensation Order. If the FCC intended, however, that a "market" be defined as a "state" as other parties claim, the FCC could have done so by clearly stating just that.

5. In other parts of the ISP Remand Order, the FCC stated that the ILEC may invoke the FCC plan on a "state-by-state basis."

6. Under other circumstances in the Triennial Review Order (TRO), the FCC concluded that the term "market" could not be defined as encompassing an entire state, SBC's proposed definition of a "market" is consistent with the FCC's definition of the term.

j. IC Issue 21c

1. In order to maintain contractual clarity and certainty, all terms and conditions pertaining to the FCC ISP Remand Order's compensation plan should be included in the ICA with Level 3.

2. The FCC established the 3:1 terminating-to-originating ratio as a means to provide a reasonable proxy for identifying ISP-Bound Traffic versus Section 251(b)(5) (voice) traffic. The ISP Remand Order instructs the application of compensation for the presumed ISP-Bound Traffic that falls above that 3:1 ratio, but below the MOU growth cap. The FCC implemented the MOU growth caps to reduce the amount of subsidization a CLEC may receive from compensation for this ISP-Bound Traffic.

3. MOU growth cap applies on top of compensable ISP-Bound Traffic those MOUs in excess of the 3:1 ratio are presumed to be ISP-Bound Traffic. The only difference is that the MOUs above the annual MOU growth cap are subject to bill and keep instead of the FCC Plan rate of $0.0007 per MOU.

k. IC Issue 13d

1. Pursuant to Paragraph 79 of the ISP Compensation Order, the FCC adopted a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is "subject to the compensation mechanism of [the] Order" including the growth caps. A carrier may rebut the presumption by demonstrating to a commission that traffic above the 3:1 ratio is in fact local traffic (Section 251(b)(5) traffic) delivered to non-ISP customers. The FCC's ISP Remand Order clearly provides for true-up back to the date a party seeks relief, provided the Party continues to pay on the disputed amounts during the pendency of the proceeding.

2. The parties should true up compensation payments or arrangement effective as of the date that a party first sought relief from a commission. The FCC's ISP Remand Order clearly provides for true-up back to the date a party seeks relief, provided that Party continues to pay on the disputed amounts during the pendency of the proceeding. By including these specific terms in the contract, the Parties are ensured contractual certainty as to how to handle a dispute over any rebutted presumption of the ratio of Section 251(b)(5) traffic versus ISP-Bound traffic. To leave the contract "open" with respect to an effective true-up date creates unnecessary uncertainty in the agreement.

l. IC Issue 13e

1. The Party that terminates more billable traffic (the "out of balance" carrier) should be responsible for calculating the traffic to be compensated under the FCC Plan.

2. SBC does not intend to shift undue burden upon others, but rather to memorialize each Party's duty to prepare accurate billing based upon the parameters of the agreement.

3. If Level 3 terminates more traffic from SBC than SBC terminates from Level 3, Level 3 should be obligated to render an accurate bill, complete with accurate calculations utilizing the FCC Plan's terms and conditions.

m. IC Issue 7a

1. The parties should begin paying each other compensation for intercarrier traffic on an agreed upon date. That date should be the day the parties agree the network is complete and ready to handle traffic of all pertinent types.

2. With regard to 911 provisioning, the network is considered complete only after Level 3 furnishes confirmation that it has 911 agreements in place with Public Safety Answering Points (or after Level 3 secures a 911 waiver from SBC). Absent a waiver, SBC does not turn the Interconnection trunks up for service until 911 confirmation is provided.

3. Once confirmation is received, SBC considers that the network is complete and a CLEC is capable of originating and terminating traffic for end users, not simply test traffic.

4. Even though intercarrier compensation arrangements may not apply on all different traffic types, such as Information Services traffic, the network must be considered "complete" by both parties prior to exchanging and compensating for "live" traffic.

n. IC Issue 7b

1. The Parties' respective tariffs govern the terms and conditions for the commencement of intercarrier compensation for this type of traffic.

o. IC Issue 21b

1. OCN is not the proper record from which carriers bill intercarrier traffic. Calling Party Number ("CPN") is the proper call information that should be used to assign traffic to the appropriate jurisdiction. OCN is not appropriate for that purpose, because it is not part of the actual call transmission.

2. For the purposes of billing compensation to the appropriate party, Facility Based CLECs receive the appropriate category of records for calls that terminate to end users served by a CLEC utilizing SBC's Lawful ULS which will contain the OCN to aid them in billing the proper party. The CLEC may utilize the Local Exchange Routing Guide ("LERG") and the Local Number Portability ("LNP") Database to help identify the appropriate party to bill.

p. IC Issue 8

1. Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their network to the carriers that terminate the calls.

2. CPN is the standard call identification known and used throughout the industry for the billing of intercarrier traffic.

3. This CPN information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them the current standard is that CPN information should be passed on all intercarrier traffic.

4. SBC simply seeks to obtain that underlying telephone number of the end user that originated that call in order to appropriately rate and bill for that call.

q. IC Issue 10d

1. Level 3 appears to propose that the Parties continue to apply a compensation mechanism which was previously agreed-upon via an "Amendment to Level 3 Contracts Superseding Certain Compensation, Interconnection and Trunking Provisions."

2. Both SBC and Level 3 entered into the 13-state Amendment voluntarily, during a time when there was less certainty as to the treatment of ISP-bound traffic, FX traffic, and even Points of Interconnection requirements.

r. IC Issue 10c

1. A typical end office reciprocal compensation rate (non-bifurcated) contains rate components that account for different costs associated with the use of that switch to terminate calls.

2. There are two different functions performed by an end office switch – the initial set-up of the call, and the switch port remaining "open" during that call. Both of these functions incur costs that are recovered in a non-bifurcated end office rate. When these rates were first promulgated, an assumption was made as to the average length of a call in order to associate the

"duration" portion of a typical call with the "set up" portion of the call. These two costs were calculated into one resulting rate.

3. A bifurcated rate allows each of these portions of the call to be individually tracked and charged as they are actually incurred.

4. Characteristics of telephone calls have evolved dramatically over the past several years. While, as of 2000, a typical voice call averaged approximately 3 minutes, ISP traffic is much longer, averaging 29 minutes in length.

5. The reciprocal compensation paid for longer calls of a longer duration was well above the cost incurred, since the one-time set up cost was paid for many time over (once each time the call went an additional increment over 3 minutes in duration).

6. This bifurcated rate structure, while initially intended to more accurately account for the costs associated with ISP-Bound Traffic, continues to be the most accurate measurement for determining costs incurred by each parties' end office call termination functions.

s. IC Issue 20b

1. Level 3 agreed in its Section 14.1 to charge for termination of intraLATA toll calls in accordance with each Party's access tariffs, as opposed to reciprocal compensation.

2. There is no evidence that Level 3's access rates bear any relationship to Level 3's respective costs. Level 3's rates are not subject to the same level of Commission review as are SBC's access rates. Level 3 has unilaterally set its access rates at levels they chose, and Level 3 is free to change those rates at any time without justification.

3. Under Level 3's proposed language, SBC must deliver intraLATA toll calls to Level 3's customers at whatever rates Level 3 wants to charge under its tariffs for IXCs.

4. Under the FCC's rules, SBC pays CLECs reciprocal compensation for Section 251(b)(5) Traffic at rates equal to the rates that SBC charges CLECs for terminating CLECs' local-originated traffic. The principle rationale for Rule 51.711 is that SBC's costs for transporting and terminating local traffic are a reasonable proxy for CLECs' costs for performing the same functions.

5. There is no evidence to suggest that CLECs' costs are higher than SBC's costs.

6. The FCC recognized that CLECs' interstate access charges were, in many cases, far in excess of the ILECs' rates, and shifted an inappropriate share of the carriers' costs to the IXCs. CLECs are permitted to negotiate higher rates with IXCs, but in the event they cannot reach agreement, the relevant ILEC rate will prevail.

7. Interstate rates reflect a composite of all components of the interstate access rate structure, while ILEC to CLEC termination charges are generally limited to rate elements specific to intraLATA toll traffic exchanged between two local exchange carriers.

8. Level 3 is seeking to establish intraLATA toll terminating rates that are higher than SBC's and that can increase during the life of the agreement without SBC's consent or any meaningful Commission oversight.

t. IC Issue 20c.

1. Level 3 is not eligible to charge a tandem switching rate per se for IntraLATA traffic.

2. The rate that Level 3 charges for IntraLATA traffic is governed by Level 3's applicable switched access tariff.

3. With the exception of the above recommended limitation on the rate levels charged to SBC, Level 3 can charge the applicable elements as allowed by their tariff.

u. GT&C Definitions Issue 7

1. The FCC's understanding and intent are made clear in paragraph 341 of the First Report and Order in CC Docket 97-158 The FCC has not changed its definition or meaning of the term ISP since this Order was issued, and as such, it remains the appropriate reference for defining this term.

v. GT&C Definitions Issue 16

1. Under Level 3's language, if SBC sold off part of its ILEC service territory (e.g. it sold the Chicago service area to MCI), the SBC ILEC service area would continue to be defined to include the Chicago service area.

2. The OET Appendix is intended to apply when Level 3 is not operating within SBC's incumbent LEC territories but is exchanging traffic with SBC. The OET Appendix is necessary to make clear the scope of SBC's duties when Level 3 is operating outside of the SBC ILEC area.

w. GT&C Definitions Issue 15. NIM Issue 7

1. The use of the vague term "applicable law" is unnecessary as the Agreement contains change of law provisions that either party may exercise to affect appropriate changes to the contract language. Level 3's insertion of "applicable law" is redundant in light of the Agreement's change of law provisions, and should be deleted.

x. IC Issue 9a IC Issue 9b.

1. The dispute may involve traffic outside the scope of this agreement, and should be resolved in accordance with applicable tariffs for such traffic.

2. ISP-Bound traffic is technically beyond the scope of a Section 251/252 Agreement. The FCC determined how carriers should appropriately treat ISP Bound Traffic. The FCC's determination currently incorporates the treatment of ISP-Bound Traffic within the scope of the Agreement, and as such, it should be treated the same as other traffic within the Agreement (Section 251(b)(5) Traffic).

y. OET Issue 1

1. The scope of an Interconnection Agreement is to establish specific rates, terms and conditions for the exchange of traffic within a specified geographic area.

2. Section 251 of the Act provides for the interconnection of a carrier's network for the exchange of traffic with the Incumbent LEC within its own operating territory. The obligation does not go beyond the incumbent territory of the ILEC, which in this case is SBC.

3. Level 3's proposed deletion of "incumbent local exchange areas" from Section 2.1 of Appendix OET implies that the language would obligate SBC to provide products and services, through the ICA, to territories that are beyond SBC's incumbent regions.

4. SBC operates outside of its own incumbent territories, but in those cases, SBC is simply another competitor within another ILEC's incumbent territory. There is no overlap between ILECs' incumbent territories, even though they may be right next to each other. When SBC operates in areas outside its own incumbent territories, it is simply another CLEC, competing for another ILEC's customers. The CLECs want SBC to continue to provide products and services as provided in the Act in those regions outside of SBC's incumbent territory where SBC is just another competitor. These products and services include UNEs, collocation, and interconnection.

z. IC Issue 22

1. The FCC recognized that current market distortions in the intercarrier compensation regime would not be completely addressed within the ISP Remand Order regarding the treatment of ISP-Bound Traffic the FCC's NPRM is a continuation of the FCC's ISP Remand Order. The FCC clearly acknowledged within the *ISP Remand Order* that the compensation mechanism contained in the Order was meant to be interim, with more direction to follow as a result of the NPRM. The FCC clearly intends to further review and potentially revise intercarrier compensation.

A. LEVEL 3'S DISPUTED FACTS CONTAINED IN SBC ILLINOIS' PRE-FILED TESTIMONY.

In this section, Level 3 presents the ALJ with a list of disputed facts contained in the pre-filed testimony of the indicated SBC Illinois witness.

I. Staff Witness A. Olusanjo Omoniyi

A. GT&Cs 6 and 7,

1. The Commission should accept SBC's position, with some modification to accommodate Level 3's position regarding the services that could be disconnected in an instance when Level 3 either fails or refuses to pay an undisputed amount. I recommend that SBC should have the right to disconnect service, but with some well-defined guidelines for such a process. I recommend that SBC should be ordered to follow a set of carefully articulated bill collection processes.

The collection process should include at least the following two steps:

1. SBC should provide Level 3 adequate notice in writing regarding the bill in question by forwarding the bill to an appropriate official designated by Level 3. Currently, SBC proposed sending two notices of disconnection for undisputed and unpaid charges but without specifying when it would be done. SBC needs to clarify how those notices would be sent to Level 3 and the applicable time interval for each notice.

2. SBC's notice to Level 3 should contain a specific deadline for disconnection of service to Level 3 if payment, in a specified amount, is not forthcoming, and should identify the service(s) that SBC will disconnect.

2. An appropriate policy will be to create a disconnection process that is a blend of the parties' positions, for a number of reasons. First, SBC's concern that Level 3 should either dispute a bill or pay it is a reasonable request. There is nothing unusual about such a position and it is a common commercial practice that payment would be made for services, unless the paying party disputes the bill. Second, SBC indicated that there would be no disconnection of service in the event that a bill is disputed.

3. SBC's proposal that it should be granted the right to disconnect for products and services after two written notices have been given to Level 3 is reasonable and should be accepted.

b. Issues PC 1 and VC 1

1. Level 3's concerns regarding its ability to "pick and choose" are overstated; its ability to pick and choose existing rates, terms and conditions is already available and included under this Agreement.

2. It appears the parties do not address a situation where the rates, terms and conditions of this Agreement may be superceded by an SBC tariff. Neither the contract provisions proposed by SBC or Level 3 contemplate this occurrence. Since they do not address this issue, my recommendation is that SBC and Level 3 should only be permitted to order from effective SBC tariff or any tariff SBC might file in future as long this agreement does not contain rates, terms and conditions for the products or services Level 3 seeks to purchase out of the tariff.

c. Issues PC 2 and VC 2

1. The period of ten (10) business days which SBC proposes to seems to be a reasonable notice period to resolve any issues of equipment collocation.

2. The proposal by SBC that Level 3 should incur the cost of removal and resulting damages if the non-compliant equipment was already collocated is reasonable as it would be unfair to require SBC bears the cost of such removal and resulting damages.

3. SBC should make its list of equipment that meets its collocation requirement known to Level 3 as soon as there is a request for collocation of equipment from Level 3.

II. Staff Witness Zolnierek

a. IC Issues: 2 (Level 3 - a,b,c,d,e,f,g,j,k and SBC), 4 (Level 3 a,b and SBC), 14(Level 3, SBC), 19 (Level 3 b), 21 (Level 3); ITR Issues: 18 (Level 3 a, b, c, d and SBC a, b), 19; DEF Issues: 2, 3(Level 3 a, SBC a,b), 19 (Level 3, SBC)

1. Level 3 has not specified whether any of the traffic it currently exchanges or will exchange in the future with SBC meets the criteria established by the FCC in the AT&T Order.

2. If this describes all services provided by Level 3 then the FCC could determine that all of the traffic exchanged between SBC and Level 3 is interstate switched access traffic subject to treatment comparable to that given to traditional interexchange carrier ("IXC") traffic. In the extreme this could imply that the parties would not need an interconnection agreement under Section 251, but rather could interconnect under the rates, terms, and conditions of SBC's federal switched access tariffs.

3. Level 3 appears to be proposing that the Commission expressly determine that it is giving up jurisdiction over IP-enabled services because it has been preempted. However, Level 3 has concurrently requested the Commission make determinations regarding rates, terms, and conditions for the exchange of IP-enabled traffic between it and SBC.

4. Level 3 also indicated that if a state commission were to resolve these fundamental issues then it would need to address implementation-related issues such as how charges should apply and how to identify and track jurisdictionally diverse traffic.21 Level 3's characterization strongly supports the notion that the IP-enabled traffic issues are implicated in virtually every issue raised in this proceeding.

5. Level 3's statements to the FCC also underscore the fact that the parties bring to this Commission for resolution a problem that is foursquare before the FCC for resolution. Furthermore, the parties can expect resolution from the FCC either before or shortly after any agreement becomes effective.

6. Thus, there may be some disagreement as to the proper treatment of IP-enabled traffic, and VOIP traffic in particular, under their current interconnection agreement. It is unclear whether the parties agree on the treatment of IP-enabled traffic under the existing contract. This

lack of clarity is material, because if the Commission does not know under what rates, terms, and conditions the parties currently exchange such traffic, then it cannot know the impact its decisions will have on either of the parties or their Illinois customers.

b. ITR Issues: 4 (Level 3 a, b and SBC a, b), 10 (Level 3 a and SBC a,c), 11(Level 3 a), 12 (Level 3 b, SBC b),14 (Level 3 a,b and SBC a,b); NIM Issues: 2 (Level 3 and SBC), 3 (Level 3 and SBC), 4, 5, 6 (Level 3, SBC); DEF Issues: 5 (Level 3, SBC)

1. While the Commission has not yet directly addressed this issue, it has determined, based on the fact that "tandem exhaust is a significant problem in Illinois," that when a CLEC's "…traffic reaches a certain level, it should do something to take traffic off the tandem."

c. ITR Issues: 1(Level 3, SBC), 4 (Level 3 a), 11(Level 3 b,c, SBC b), 12(Level 3a, 350 SBC a), 16(a, b, c), 18(SBC b); NIM Issues: 1, 5; DEF Issues: 1, 9(Level 3, SBC a,b), 10(Level 3, SBC a,b), 11(Level 3, SBC a,b), 12(Level 3, SBC a,b), 13(Level 3, SBC), 14(Level 3, SBC a, b); IC Issues: 4(Level 3 a, b, SBC), 17(Level 3)

1. In Docket No. 03-0239 AT&T, requested the Commission to order SBC to modify its systems so that AT&T could combine originating local and intraLATA toll traffic with interexchange access traffic on AT&T's Feature Group D exchange access trunks.

d. ITR Issues: 14(SBC c); DEF Issues: 18(a, b), 19(Level 3, SBC), 21(Level 3 b, SBC a,b); IC Issues: 11(Level 3 a, SBC a), 14(Level 3, SBC), 15(Level 3, SBC)

1. With respect to FX and FX-like traffic the Commission has consistently held that this is local exchange traffic. Such services are not subject to local reciprocal compensation.

c. DEF Issues: 7, 8(Level 3, SBC), 21(Level 3 a, b, SBC a, b); IC Issues: 5(Level 3, SBC), 10(Level 3 a, b, c, SBC a), 11(Level 3 a, SBC a), 13 (Level 3 a, b, c, d, e), 14(Level 3, SBC), 15(Level 3, SBC), 21(SBC a, b, c)

1. Core Communications, Inc. ("Core") has petitioned the FCC to forbear from applying the provisions of the ISP Remand Order. The FCC has until October 11, 2004 to act.

e. ITR Issues: 2(Level 3, SBC), 5(Level 3, SBC), 6(Level 3, SBC), 8(Level 3, SBC), 9(Level 3, SBC), 15(a, b); IC Issues: 11(SBC e, f)

1. There is no current FCC rule that requires SBC to provide transiting service under Section 251 of the 96 Act.

f. UNE Issue: 1

1. The FCC's Interim UNE Order concerns only a subset of all Section 251 UNEs. The D.C. Circuit Court vacated the FCC's impairment determinations with respect mass market switching,

enterprise market loops and dedicated transport. Therefore, the FCC rules do not currently require SBC to provide these elements as Section 251 UNEs.

2. Furthermore, the FCC has conditioned SBC's requirement to provide certain other UNEs on its requirement to unbundle local switching. These elements include CNAM databases and/or information, LIDB databases and/or information, toll free databases and/or information, SS7 systems, shared transport, and Operator Services and Directory Assistance (OS/DA).

3. SBC is obligated by the FCC's Interim UNE Order, however, to provide the above UNEs to Level 3 as it did under an effective interconnection agreement or state tariff on June 15, 2004.

g. Conclusion

1. Level 3 needs to address specifically, rather than in generalities, the types of traffic it currently exchanges and will exchange with SBC under this contract.

Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC.

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